

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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In Re:

Shane Christopher Buczek

Debtor,

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~~DIGITALLY-RECORDED HEARING~~

Case No.: 1-19-11441-CLB
Chapter 13

SSN: xxx-xx-5635

Buffalo, New York

July 27, 2020

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CARL L. BUCKI
UNITED STATES BANKRUPTCY JUDGE

FOR DEBTOR:
(Via telephone)

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(Via telephone)

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P R O C E E D I N G S

THE COURT: This brings us to Shane Christopher Buczek.

Can I have appearances, please.

MR. BUCZEK: Shane Christopher Buczek.

MR. VILKHU: Attorney VilkhU on behalf of Fein, Such & Crane and the creditor.

THE COURT: Who was that, again?

MR. BUCZEK: Yes. Vikram VilkhU appearing on behalf of Fein, Such & Crane.

THE COURT: Thank you for coming.

Who else do we have?

MR. VILKHU: Thank you, your Honor.

MS. MacDONALD: Janet MacDonald for the Trustee.

THE COURT: All right. And who else do we have?

(No response.)

THE COURT: All right. We have three matters on this morning. I think it'd be best if I start with the motion to compel the Trustee to administer assets.

And that's your motion, Mr. Buczek. So why don't you speak just to that.

MR. BUCZEK: Yes, your Honor. I know we had a couple conversations before back in January and just recently regarding the birth certificate and the accusive (phonetic)

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1 and you did mention to me that I might be in the wrong court,
2 if you remember that back in January. We had a just a brief
3 discussion.

4 And so I've been thinking about this over the last
5 several months and in reading the duties of the Trustee, I
6 went ahead and put that motion to compel the Trustee to go
7 after that asset. Now, in reality, if that's going to take
8 place, it's been undecided. So I wanted to push that, if
9 that's a possibility. I know it sounds very crazy and it's
10 something that's probably never been addressed by the Court
11 but it's very real.

12 And, you know, I'm just going to go back to 2010
13 when I had a trial in front of Judge Skretny. We had a
14 depository trust clearinghouse, Joseph Kelly, risk management
15 department talking about the accusive, the birth certificate,
16 the assets and debtor/creditor situations. So, all I can do
17 is -- there was no attempt to get the Trustee really wound up
18 here and I didn't expect that motion for her to dismiss the
19 case. My whole thing was to go after the assets.

20 And nobody ever talks about -- people live their
21 whole life not talking about this stuff. But it's very real.
22 It's true. But getting somebody to do that is really unheard
23 of and so I wanted to throw this out there that I'm not here
24 to get the Trustee upset because her motion was -- you could
25 see her motion response was on fire and I wasn't expecting

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1 her to try to dismiss the case.

2 So, leaving that aside, that's the only reason why
3 I filed it. I'm not the Trustee so I did file those
4 subpoenas which was -- there was a deficiency notice, I can
5 clear that up at a later time. I'm not asking for legal
6 advice but it's my opinion -- I'm not sure if you got an
7 opportunity to read my response back regarding the duties of
8 the Trustee to go after any assets that I believe that is out
9 there.

10 And I did, there's a lot of reading here but I just
11 tried to put as much stuff in the record to prove my point
12 that it's, it's out there and all I can do is ask the Court
13 to at least try to go after the accusive number and the
14 assets that's sitting there and I put an enormous amount of
15 work to get an accusive. Leaving aside -- I never even
16 brought up the Social Security, passport, driver's license,
17 anything like that. I just was focused on the birth
18 certificate and bringing in the subpoena I did file which was
19 defective and I can fix that at a later time. I'm not really
20 sure if that's my responsibility but I went ahead and did it
21 anyways.

22 I've already had communications with Fidelity, the
23 chief financial officer, the DPC, depository clearinghouse at
24 55 Water Street in New York City. I didn't talk to the chief
25 financial directly but I did talk to one of their agents over

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1 the phone about performing these duties and going after the
2 accusive. But Joseph Kelly was in risk management way back
3 in 2010 and Judge Skretny's transcripts -- there's so much to
4 tell you about this and I don't want to drag this out too
5 long. But this stuff is real. Getting the Trustee to do it
6 would be something that's really unheard of. There is no
7 case law on it. I went to LexisNexis, Thomson Reuters, went
8 everywhere. There's nothing. I think that the ones that
9 have -- been successful at it, they're not going to put that
10 on the record. They're not going to report that stuff.

11 All I can do is ask the Court kindly to at least
12 look into it and that's, that -- that I wasn't there to get
13 the Trustee, how do I say it, it wasn't like I was throwing a
14 dart. I was just trying to move the Court or move the
15 Trustee to, hey, we have an asset here, let's go after it.

16 And there is also an issue in her response back
17 that the government never filed a claim against me and
18 there's two mortgages that are still pending in the appellate
19 court that have not been resolved. A brief has been filed
20 with Nationstar. KeyBank is pending to be filed and that
21 right there, those two briefs.

22 And then, your Honor, I'm not sure if you know this
23 or not but I did, I raced down to the courthouse around 7:30
24 this morning and filed my adversary proceeding regarding
25 KeyBank. And the reason why I did that is because I'm trying

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1 to force Fein, Such & Crane, David P. Case, to produce the
2 original documents, which I know they don't have, so I have
3 to make a record of that. And I'm not trying to be
4 redundant. He said, oh, you're bringing this up again,
5 you're bringing this up again. I'm trying to find a way of
6 properly doing it. It's like walking over a river and if you
7 step on the wrong piece of wood, you go right straight
8 through and you're done.

9 So I'm trying to do this properly and all I'm
10 trying to do is somewhere along the line establish on the
11 record that there is no outstanding obligations regarding
12 KeyBank. That's why I put that motion for sanctions together
13 which is we're not addressing that this very second but I'm
14 just trying to very carefully have the Trustee at least look
15 into it. Everything I possibly can put together I put in
16 there. I might have overdid it. But the reason why I
17 overdid it cuz nobody, nobody's ever brought this up before.
18 I don't think it's ever been brought up with you, Judge, as
19 far as I know.

20 But the one thing I want to tell you before I let
21 the Trustee speak is Judge Skretny questioned the depository
22 trust clearinghouse Joseph Kelly regarding the birth
23 certificate and the accusive number and he would not answer
24 the question. And the judge said, Judge Skretny said you
25 have to answer it and he, he said -- then he finally answered

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1 and he goes: I don't know. So he would not really address
2 the issue of the asset, length of the accusive number and how
3 they sell our original documents as a security, just like
4 they do with the mortgages, auto loans, airplanes, the list
5 goes on. I mean, there's -- we're talking about tril --
6 billions and trillions of dollars being made on these
7 securities.

8 So, he asked Anna Medlock (phonetic) from the IRS
9 that was in charge of 300 IRS agents. This is -- he is Judge
10 Skretny and Mrs. Medlock came back and Judge Skretny asked
11 several questions. The one that really stuck out the most.
12 He said Mrs. Medlock what is accepted value mean to you, what
13 does it really mean to the Internal Revenue Service? And she
14 quietly whispered into the microphone and said it means
15 money. It means money or something like that. And Judge
16 Skretny was kind of stunned that she said that and he says,
17 okay, let's carry on with the trial.

18 Right there and then I should have been held
19 innocent and the whole case thrown out. Unfortunately,
20 nobody understand what she just said. I think you, Judge,
21 understand what she said. I think Judge Skretny understood.
22 I clearly understood what was going on. And the reason why
23 I'm bringing that up, it goes back to the accusive number.
24 It goes back to the prepaid treasury account which is called
25 the treasury tax law account. There's -- and when we pass

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1 away -- I don't want to pass away for a long time because I
2 love being here -- but when we do, that security it's
3 liquidated and it goes back to the federal government. What
4 they do with it, I don't know.

5 So I'll leave, I'll rest on that, Judge.

6 **THE COURT:** All right. Let me hear, then, from
7 Ms. MacDonald.

8 And, Ms. MacDonald, I will take up your motion for
9 dismissal last but right now just speak, if you could, to the
10 motion to compel by Mr. Buczek.

11 **MS. MacDONALD:** All right. Your Honor, Janet
12 MacDonald for the Trustee. The debtor here apparently seeks
13 to have the Trustee liquidate what he believes to be an asset
14 in this case. There's no basis in law for what he's
15 requesting. Section 1302(b)(1) specifically excludes from
16 the Trustee's duties the duty to collect and reduce to money
17 property of the estate. That's provided for in 11 U.S.C.
18 Section 704(a)(1). This debtor proceeds here in Chapter 13.
19 Even were he in Chapter 7, the Trustee has discretion and
20 judgment and in this case the Trustee has no desire and no
21 obligation to liquidate what the debtor believes to be an
22 asset.

23 **THE COURT:** All right. Mr. Vilku, do you have
24 any -- I don't think you have a say in this first motion but
25 I don't want to --

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1 **MR. VILKHU:** No.

2 **THE COURT:** -- exclude you.

3 **MR. VILKHU:** I think you're right, your Honor, and
4 I thank you for your time but I think the Trustee said it
5 all.

6 **THE COURT:** I'm going to deny Mr. Buczek's motion.
7 Ms. MacDonald is absolutely right: The duties and
8 responsibilities of a Trustee include -- the duties and
9 responsibilities include some of the responsibilities of a
10 Chapter 7 Trustee but specifically excluded from that is any
11 obligation to liquidate and turn into cash assets of the
12 estate. And so the Trustee, the Chapter 13 Trustee, has no
13 responsibility for what the motion seeks to compel and,
14 therefore, the motion is denied.

15 Let's now turn to the motions for sanctions as well
16 as the cross-motion. Mr. Buczek, that's your motion, your
17 opportunity to speak.

18 **MR. BUCZEK:** Yes, your Honor. I've been thinking
19 very hard in what Mr. Case wrote in his response. There's
20 several things that I totally disagree with but one thing I
21 want to mention is Governor Cuomo did pass that law back in
22 January about standing and how standing can be challenged at
23 any time. I'm sure you're familiar with that. And I know
24 this is a federal court.

25 (Extraneous noise.)

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1 **MR. BUCZEK:** I'm sorry. Judge, did you say
2 something?

3 **THE COURT:** No, I didn't. I'm listening to you
4 carefully.

5 **MR. BUCZEK:** Oh, I thought you were going to say
6 something.

7 So Governor Cuomo made a -- amended the residential
8 properties, you can challenge standing any time even after
9 the sale of the property. And I put that in there and that's
10 all been in front of Judge Sheila DiTullio -- actually not me
11 but it would be my mom's case. But that, that that's a big
12 issue and why I say I really thought about it, really thought
13 about it and I says I need to go to adversary proceedings to
14 get some true answers here about the subpoenas and this has
15 nothing to do with the accusive, just basically producing the
16 original documents, the true accounting and that's why I
17 filed the adversary proceeding. I know you didn't get a
18 chance to review it but -- and I'm sure if this Court is
19 going to litigate this -- by the way did you, if I can put
20 this on the record, it's 20/10120 slash one -- 01035, I was
21 just wondering if you had an opportunity to get notice that
22 that was filed this morning.

23 **THE COURT:** That's the first thing I was told when
24 I walked into my office.

25 **MR. BUCZEK:** Okay. And so I'll -- I guess I'll let

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1 that right there dictate the motions for sanctions. I don't
2 want to be redundant and use the Court's time.

3 So, I don't know how to properly say this but this
4 is a last minute decision and I think it might be a good idea
5 to possibly, with the permission of the opposing party and
6 the Court, is to withdraw that motion and follow suit with
7 the adversary proceedings. I think that because all the same
8 issues are in the adversary proceedings and this was a last
9 minute decision because I'm having a very difficult time
10 getting that subpoena enforced against Mr. Case and Fein,
11 Such & Crane regarding KeyBank. And I, you know, I guess
12 I'll leave it with the adversary proceeding with the
13 permission of the Court and the opposing party.

14 **THE COURT:** We also have a cross-motion that I have
15 to give consideration to so I can't just allow this to be
16 withdrawn when I have a cross-motion.

17 **MR. BUCZEK:** Oh, okay. You're correct on that, I
18 forgot all about that.

19 **THE COURT:** All right.

20 **MR. BUCZEK:** Well --

21 **THE COURT:** Go ahead.

22 **MR. BUCZEK:** I, I -- everything's, everything --
23 I'll carry it through. I did the 21 days. I did it
24 certified mail. It was never corrected. I might as well go
25 ahead and get right into it but the proof of claim that was

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1 filed, I'm sure you're aware of this, proof of claim clearly
2 states that I have a loan with KeyBank. And that's not true,
3 Judge, I don't have a loan with KeyBank. And, in fact, it
4 was -- I believe it was signed by, I think it was signed by
5 one of the bankruptcy senior advisers with KeyBank in Ohio.
6 The name's -- her name's Christine and I believe her last
7 name is Banaszak, B-A-N-A-S-Z-A-K, I believe, and she
8 actually did a proof of claim and signed it and filed it into
9 the record which is one of the -- it's in the exhibit, by the
10 way, for the motions for sanctions and then Santiago. I
11 forget -- her first name starts with a G, her last name is
12 spelled S-A-N-T-I-A-G-O. She did a notice of mortgage
13 payment that I have some kind of obligation to some kind of
14 loan which I don't.

15 And my argument is that once I did the quitclaim
16 back in 2017, there was to obligations because we already
17 talked to Judge Thomas Franczyk regarding the subpoenas and
18 we were ready to do it and have a hearing on that and at the
19 very last minute he retired and he gave that over to Judge
20 Colavecchia (phonetic) and Colavecchia just ignored it and
21 here we are today in bankruptcy court. I cannot get anybody
22 to force the opposing party to establish the note.

23 And you know my thoughts on it, Judge. We went
24 through this over and over and over and over again and they
25 don't have the note. They never had it. It's been gone and

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1 I did establish on the record regarding the accusive how that
2 was sold, that clearly shows it's gone. It's been gone for a
3 very long time. It's a very interesting discussion but it's
4 clearly laid out and I followed the rules this time. I gave
5 them 21 days to fix it pursuant to the rule and I'm not sure
6 if you had an opportunity to read it. It's a quite lengthy
7 motion for sanctions against Mr. Case and then he came back
8 with a cross motion which I did respond. Hopefully it's up
9 on Pacer by today. I'm not sure if you had the opportunity
10 to at least review it but everything is clearly spelled out.

11 So all I'm doing is he filed sanctions against me,
12 your Honor. I established filing sanctions against him and
13 it feels like, to me, I feel like that I'm, I've been -- I
14 feel like I'm getting kicked, like I have a sticker on my
15 back, kicked like George McFly from *Back to the Future*.
16 That's how I feel sometimes. It's like whatever I say,
17 whatever I do, it's like nobody hears me. It goes in one ear
18 and out the other and I constantly get kicked around and it's
19 really depressing actually. It's like why am I even
20 bothering going to bankruptcy court. Well, what I'm trying
21 to do is establish some kind of debt.

22 If there's a debt at large in my plan that I can
23 fulfill, I'll gladly pay it but that has not been produced.
24 There's nothing regarding any type of obligation to KeyBank
25 and the proof of claim. And they actually signed it under

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1 penalties of perjury, the officer for KeyBank, that I
2 actually have a loan for KeyBank, I mean, how do you get
3 around that one? To my understanding there's criminal
4 penalties attached to that if you do that. You know it. The
5 opposing party knows it, I know it. I never had a loan with
6 KeyBank. All I can do is rest on the entire motion that I've
7 filed. I don't want to sit here and eat the Court's time up
8 and start reading this whole thing into the record. But
9 everything I do is I do under penalties of perjury. I'm
10 trying to be, I'm trying to do, you know, do the CliffsNotes
11 of the motion -- of the actual motion for sanctions. That's
12 all I can really say. You know all the facts.

13 The opposing party knows all the fact but they
14 continuously claim that they have the -- that I continuously
15 try to attack the legalities of the note and the security
16 instrument that provides a secure creditor's right to
17 encumber the foreclosure upon real property which we already
18 know that's not true. And then sometimes they like to sign
19 under penalties of perjury and their response is quite
20 lengthy but the thing is it means nothing when you have no
21 standing. They've never had any standing.

22 And Thomas Franczyk was going to set up a hearing
23 to establish the note and then at the last minute he
24 disappeared. And I think he retired, though, but they sat on
25 that thing for months, almost a year actually. And they

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1 refused to address the setting up. We tried to get a hearing
2 date but they just wouldn't give it to us. And as you are
3 well aware, he retired, your Honor, back in December of 2017
4 and it went to Judge Colavecchia in January of 2018. I'm
5 sure you're aware of that, correct?

6 **THE COURT:** Yes, I am.

7 **MR. BUCZEK:** Okay. Without keeping you listening
8 to me and all that, you know all the facts. I don't want to
9 repeat things over and over and over and over again but they
10 don't -- they will not establish the note. If there's
11 something there that needs to be paid off, I'll gladly pay
12 for it. Unfortunately, the note has been gone for the
13 longest time and we've made several responses even way back
14 in 2014, they -- no answers but that was concerning my mom's
15 case way back then.

16 Now I'm trying to establish some kind of, some kind
17 of debt. So I'm just going to focus on the proof of claim,
18 the notice of mortgage payment and they're claiming I have a
19 loan with them and I have no written contracts with KeyBank.
20 I've never had. And they keep on saying that they're
21 secured -- which they're not. I don't know what else to do.
22 So that's the reason why I filed the sanctions against
23 Mr. Case.

24 And I think you had an opportunity to review the
25 motions for sanctions and I do want to make something really

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1 clear to you and I gave him the 21 days to respond and he
2 never did. I sent it by certified mail.

3 **THE COURT:** Well, let me hear from, at this point
4 let me hear from Mr. Vilkh.

5 **MR. VILKHU:** Thank you, your Honor. Vik Vilkh,
6 Fein, Such & Crane.

7 Your Honor, I'm a partner of the firm of Fein,
8 Such & Crane. Mr. Case wasn't available today so I've taken
9 this case. I'm very familiar with the underlying salient
10 facts.

11 I guess the first thing I would say, your Honor, is
12 that, as the debtor has noted, he filed a motion or a
13 complaint, that is about an hour ago, at least that is what
14 it bears on Pacer when I pulled it this morning. And every
15 single one of the allegations there had been made in previous
16 applications to this court, which underline the fact -- the
17 arguments made in Mr. Case's cross-motion.

18 The fact of the matter is that this is the at least
19 the fifth time the issues related to the foreclosure and the
20 issues that have been underlying this bankruptcy have been
21 litigated before this Court. The issues related to this
22 foreclosure, this Court has ruled previously that these are
23 state court matters and this court was not going to posit any
24 sort of opinion or decision in regards to those in rem
25 proceedings.

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1 I would also note that there has been a default in
2 the cross-motion response. My office filed a cross-motion.
3 There has been a default in responding to that motion. Now
4 I'm sure the debtor will advise that he filed something this
5 morning I think at 9 a.m. or 8 a.m. in the morning but that
6 is, by definition, a default so there really is no opposition
7 before this court against my office's cross-motion for
8 sanctions.

9 You know this Court has wrestled with these issues
10 for quite some time, as has the Trustee, I imagine. And the
11 crux of my office's motion and cross-motion is that this
12 conduct by debtor is the very definition of frivolous. This
13 is a unique case -- not unique for the legal issue that it
14 presents in terms of the foreclosure but in terms of the
15 manner in which the litigation has proceeded.

16 There have been a total of two attorney grievances
17 filed against my office, two attorneys have been personally
18 sued by debtor. There have been CSB (phonetic) complaints
19 filed against my client and each of these allegations have
20 required responses. They have required representation. They
21 have required the time and attention of seasoned attorneys to
22 respond to. And I would note that every single one of these
23 allegations have been and barbs levied against both my
24 clients, the person, practices of people in my office have
25 resulted in nothing, not a single ruling in favor of debtor

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1 or single ruling in favor -- against any member of my firm or
2 my client.

3 And, you know, the purpose of the motion for
4 sanctions is not only to compensate my office for the time
5 and expenditure to respond to these frivolous proceedings,
6 there is to appear at small claims court actions in various
7 jurisdictions, to respond to CSB complaints but also to seek
8 an injunction to prevent further allegations and further
9 complaints and further expenditures to be made by my office
10 to defend itself against the frivolous claims of defendant.

11 You know, if you look at the contents -- even if
12 the court is going to acknowledge the untimely nature of the
13 complaint filed this morning and the allegations contained
14 therein, they're largely the parroting, and regurgitation of
15 arguments previously made. So even if they're untimely, they
16 are on their face deficient. There are actually zero
17 particularities described in terms of fraud. There are a
18 series of ad hominem attacks against individuals who work for
19 the firm on behalf of a creditor who has filed secured claim
20 in their proof of claim. And the issues related to
21 foreclosure again are state matter proceedings and this Court
22 has made that clear.

23 And, you know, my office seeks relief from this
24 Court -- and I use the word relief both in a legal sense but
25 also in a lay sense -- that this matter has proceeded far

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1 enough and my client and my office have been compelled to
2 expend sums of money and time to defend itself against a
3 series of repetitive and frivolous ad hominem attacks and so
4 we would ask this Court to find that the debtor has defaulted
5 as against our cross-motion, that our application for
6 sanctions is granted, in the sense that we are granted at
7 least a \$750 sanction for the time to respond to these
8 proceedings; and then probably, most importantly, an
9 injunction to prevent further proceedings filed against my
10 office in regards to prosecuting a foreclosure action and
11 protecting a secured creditor in a bankruptcy proceeding.

12 Thank you, your Honor.

13 **THE COURT:** Ms. MacDonald, did you want to be heard
14 at all on this cross-motion?

15 **MS. MacDONALD:** No, your Honor.

16 **THE COURT:** All right. Let me ask one question of
17 Mr. Vilku.

18 To the extent that -- in a moment I'll be hearing
19 the Trustee's motion to dismiss the case. To the extent that
20 I grant that motion -- and I haven't heard argument so I've
21 made no decision yet -- but to the extent that I grant the
22 Trustee's motion, does not your motion to restrain further
23 proceedings in this court become moot?

24 **MR. VILKHU:** Yes, your Honor, in regards to the
25 injunction portion of our motion for sanctions, I would agree

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1 with the Court.

2 **THE COURT:** All right. Let me now hear from the
3 Trustee on her motion to dismiss the case.

4 **MS. MacDONALD:** Your Honor, the Trustee moves to
5 dismiss the case for cause.

6 The case was commenced under a Chapter 13
7 July 19th, 2019. We have yet to complete a 341 meeting,
8 notice creditors with regard to a plan or achieve
9 confirmation. The debtor did file a plan providing for
10 payment of \$95 a month. He has made those payments. But his
11 argument goes to the validity. The only claims filed in the
12 case, those claims being by KeyBank and Nationstar mortgage,
13 he denied both personal liability on the claims and, if I
14 understand correctly, the validity of the lien on his real
15 property. So there is no, no claim to be paid through the
16 plan in the event of confirmation and no purpose served by
17 continuing the proceedings here.

18 The debtor did state earlier this morning that he
19 would gladly pay any claim determined to be valid but his
20 schedules don't show income anywhere near sufficient to
21 address the claims that are filed in the case. The mortgage
22 arrears by Nationstar is in excess of \$142,000. The arrears
23 by KeyBank are \$29,000. So, even if one of those claims were
24 allowed, he has income insufficient to fund a plan that would
25 address the claims filed in the case.

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1 I'd also move for dismissal under 11 U.S.C. Section
2 521(e)(2)(B). The debtor has not yet submitted tax returns
3 to the Trustee. Those were required seven days prior to the
4 first meeting of creditors.

5 **THE COURT:** All right.

6 Mr. Buczek, it's your opportunity to respond.

7 **MR. BUCZEK:** Yes, I want to.

8 **THE COURT:** And respond both to the cross-motion by
9 Mr. Vilkuh, as well as to the Trustee's motion to dismiss.

10 **MR. BUCZEK:** Okay. Regarding the -- getting back
11 to KeyBank really quick is there is not one of the documents
12 have been filed -- by the way this is bankruptcy court. I
13 know he keeps on saying we have to go back to state court.
14 Remember he says go back to state court.

15 They won't serve me. They won't serve me in state
16 court. I can't file anything in state court so that's kind
17 of a moot issue. There's nothing I can do with that.

18 But this entire time we've been in bankruptcy there
19 has not been one affidavit from anybody from KeyBank stating
20 I have a loan with them.

21 Number two, I did bring that up in the adversary
22 proceedings and it's humanly impossible for him to read over
23 300 pages in the matter of the last hour. It's impossible.
24 There's a lot of different arguments in there that need to be
25 litigated and set for hearing.

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1 And I hope the Court keeps this case and not
2 transfer it to another judge. I prefer to keep it in front
3 of you, Judge Bucki, if you would be so kind. I really
4 appreciate that. I've been -- do enormous amount of work. I
5 mean, you would think this house was worth at least 13 or 14
6 or \$15 million the way KeyBank's -- the way the law firm is
7 acting.

8 Okay, so I'm being sanctioned for sticking up for
9 our only thing our family has left. I'm lost. I'm really
10 lost here. So, it's base -- so we should just live in the
11 woods in a tent somewhere and hang out with the homeless
12 people under a bridge? Is that what he's trying to say?

13 We know there's no debt. I know how the system
14 runs, Judge. I got people in my own family that, that do
15 this for a living. They monetize these notes. I know
16 exactly what's going on. They know it, too, but what they do
17 is they say little things like, oh, oh, he's in default, he
18 didn't respond.

19 Well, guess what? I did respond to that. I'm not
20 in default and I made that clear when we first started today.
21 We know they don't have the original note. We know there's
22 no loan in my name. The proof of claim clearly states under
23 penalties of perjury, which is addressed in the adversary
24 proceeding with more information regarding that which has not
25 been addressed here in sanctions but they filed a fraudulent

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1 proof of claim, a fraudulent notice of mortgage payment and
2 it's almost like nobody can hear me. And I guess that's the
3 price you pay when you go pro se. There is no debt at large.

4 Now, getting back to the issue of the bankruptcy,
5 having the thing dismissed, well, we're still appealing that.
6 I'm waiting to find out what happens with Judge Sinatra. I
7 don't know what's going to happen. Maybe there is a little
8 bit of debt left. Maybe I'm 100 percent right. I don't know
9 right now. So the dismissal would be premature. I haven't
10 been able to fully litigate those briefs to remand it back
11 down to the bankruptcy court and sort all this out because
12 right now there's been no true accounting from KeyBank
13 whatsoever. They just claim they have a note, you owe this
14 much. They put numbers on a sheet of paper with interest on
15 something they don't even have.

16 And, once again, I want to stress, Judge, that
17 nobody from KeyBank has ever filed an affidavit under the
18 penalties of perjury that I have any type of obligations,
19 contracts, loans, or anything regarding any type of
20 outstanding debt. Now, of course, I'm appealing that and
21 bringing it back to the bankruptcy court.

22 And now we have an adversary proceeding which we'll
23 address at a later time and I can move forward with subpoenas
24 to address that issue of them establishing the note. And I
25 will follow the rules because I know the last one I filed was

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1 deficient but I will make sure the corrections are ready to
2 go for the adversary proceeding.

3 And another thing, too, Judge, I, you know, I want
4 to bring Willie McCaffrey in. We've had several affidavits
5 regarding the, you know, you talked about it last year about
6 the UCC 3804, about having a, you know, the bond attached to
7 the lost note activated.

8 Somehow KeyBank still thinks they have the note
9 which they don't. They never filed no bond. Nationstar's
10 never filed no bond. Nationstar's in a complete mess,
11 leaving aside the Rosicki and Rosicki that originally had
12 that loan was indicted for the same thing I've been saying
13 for years -- and I sent everything to the U.S. Attorney's
14 Office, Mr. Kennedy back in 2,000. It had to be right around
15 2016 it was. Spring of 2016. And shortly thereafter, the
16 indictment came down.

17 This is exactly what KeyBank's doing. They don't
18 have any of the document to prove any type of debt. In fact,
19 that's why I did the quitclaim because I knew there was
20 nothing. There was no outstanding obligations and so I just
21 wanted to stress that I do have a due process right to be
22 heard for the adversary proceedings to establish and bring in
23 this original note -- and the accounting, by the way, is a
24 complete mess.

25 We did get a letter, by the way -- I do want to put

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1 this on the record. We did get a letter from David P. Case
2 regarding a possible settlement offer. Unfortunately, we
3 didn't get that letter until very, very late June. There's
4 something seriously wrong with the U.S. Mail Service. I'm
5 sure counsel for the opposing side will agree with me that
6 that letter was sent some time in May. We never got it till
7 late June, June 20th or 23rd, about a possible settlement
8 agreement.

9 So I want to let you know that was on the table but
10 the letter clearly states it expires on June 1st but there
11 was no way to file a -- any type of a counteroffer because it
12 already expired in his letter. So the U.S. Mail Service has
13 been not cooperating too well. Maybe because of the Corona
14 Virus going on and a lot of people being out of work.

15 But, your Honor, all I can do is thank you for
16 being kind to me and listening to me and you know how I feel
17 about everything. We know there's no outstanding
18 obligations. They're not a secure party creditor. They have
19 no proof of anything that they loaned anything to me at all.
20 And this is my bankruptcy and we're in federal court not
21 state court.

22 And I understand that you mentioned to me to go
23 back to state court. But state court will -- first of all,
24 they won't serve me and I'm not allowed to file anything in
25 the state court so the joinder has been denied and I'm moving

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1 forward in bankruptcy court and I'm in front of Judge Sinatra
2 for pending decisions on the briefs and now we have the
3 adversary proceeding. So I'm not try to eat anybody's time
4 up. I'm only trying to save the only thing our family has
5 left.

6 **THE COURT:** All right.

7 Ms. MacDonald, in your oral argument, you note --
8 you did not make reference to the argument that's in your
9 papers about dismissal for failure to submit tax returns.
10 Was that deliberate or --

11 **MR. BUCZEK:** Oh, yes, you know, your Honor, first
12 of all, I don't have anything, anything to report. I have
13 no, there's no way, I don't know, I don't have it. I haven't
14 made any money because I've been working trying to save this
15 property so there's been nothing. There's no way to even
16 file taxes. And I'm sure, you know, I'm not sure if I'm even
17 required to file income tax and I'm kind of like nontaxable.
18 I have nothing coming in, no income coming in. So if, if --
19 I did read it. But there was no notice given to me by the
20 Trustee, hey, we're going to give you 7 days or 10 days or 20
21 days to get this in. I don't have anything to report except
22 maybe a big fat zero. And I clearly laid it out in the in
23 forma pauperis applications of my, my income level. I don't
24 have anything coming in. So I mean, what do they want a
25 blank sheet of paper? With a big fat zero in it? I don't

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1 have anything. So there's really nothing to report on that.

2 **THE COURT:** All right.

3 **MR. BUCZEK:** And if the Trustee wants me to do
4 something about that, I will. But there's -- I don't think
5 there's a requirement. I couldn't find a requirement. And I
6 don't have anything, no income coming in so how do you file
7 something you don't have?

8 **THE COURT:** All right. All right. Anyone else
9 want to add anything?

10 **MS. MacDONALD:** Your Honor, I would just say that
11 if, if Mr. Buczek is not required to file tax returns, that
12 might be a defense to the Trustee's motion to dismiss under
13 521. However, it, it enhances my argument that the debtor
14 can't propose a feasible plan if he has no income.

15 **THE COURT:** Yeah. All right.

16 **MS. MacDONALD:** And the Chapter 13 is for the -- is
17 for reorganization and addressing debt. If he has no income
18 to address valid debt, then there's no further purpose served
19 by being here at Chapter 13.

20 **THE COURT:** All right.

21 **MR. BUCZEK:** Judge, could I comment on that. I do
22 have a little bit of money coming in but nothing that is
23 something that's required me to file a 1040.

24 And, you know, I do want to ask you one more
25 question. I almost forgot about this. When Mr. Case filed

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1 his cross-motions for sanctions, he actually, in Exhibit A,
2 he actually made a copy of the complaint I sent in to the, to
3 the Bar grievancies, I believe that you're supposed to keep
4 that private and confidential. I don't think that's the
5 proper thing to do, to file whatever I filed to the Bar
6 grievency to put it in the public record. I do want to make
7 that clear to you. It's a real minor thing to me.

8 But they keep on claiming that I go to the Consumer
9 Protection Bureau file complaints, nothing's been done. Oh,
10 something's been done, I can guarantee you that.
11 Unfortunately, they can't act as your attorney and things
12 have been done in small claims. There was a judge in
13 Rochester that was -- he almost walked across the line and
14 agree with me that you have some very good arguments. So
15 there was no time wasted in the small claims that I filed way
16 back in 2017 and '18 in Rochester where I sued them in their
17 jurisdiction in small claims. So, those were dismissed but
18 without prejudice so I want to make that clear. So, no --
19 there's nothing, you know, they are not doing anything --
20 they are doing something.

21 Unfortunately, like you were saying, Judge, I need
22 to go back to state court. I think this whole decision, you
23 need to go back to state court. And I, you know, you might
24 be right. I know I saw your decision with the Diocese and I
25 read it, clearly read it. I clearly understand where you're

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1 coming from.

2 But on the other hand, this is bankruptcy court. I
3 have property. The Trustee never showed up for any of my
4 stays when they lifted the stay with KeyBank and Nationstar
5 and you know all the issues with that. And they were never
6 there to help me out. Not once have they ever, you know, put
7 their hand across and say, okay, let's look into this, not
8 once. They're one hundred percent pro creditor, secured
9 creditors which KeyBank's not. They do nothing to help us,
10 the working man, the working people. And this is the reason
11 why people get so mad. They're so upset at what's going on
12 today, you know, you see all these riots going on. You see
13 all these -- I'm not condoning these rights by the way but
14 people are basically just mad about everything. The
15 attorneys, I mean, you ask anybody out in downtown Buffalo:
16 Do you trust an attorney? Nine out of ten times you're going
17 to say absolutely not and they continuously, even in my
18 bankruptcy, a simple little house in Derby, they can't even
19 tell the truth.

20 And you got no one to go to. What -- you think the
21 news is going to cover a story on this? Absolutely not.
22 They're not going to cover a story on this. It's very
23 difficult to get any type of traction but the Consumer
24 Protection Bureau I've talked to several times. They see the
25 issues. They see what's going on but you need a lot of

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1 people to complain before they do anything. One or two
2 people or ten people complaining about KeyBank is not going
3 to cut it. But they do make a record of it so I want to make
4 that perfectly clear: Nothing's been done because a lot of
5 people need to complain. That's what they gather information
6 and once they have a lot of people -- I'm talking hundreds or
7 maybe even thousands of people -- that complain about the
8 same company, then they'll do it.

9 But what's really awful, Judge, what's really awful
10 is a lot of people are having their houses robbed right
11 underneath their skin and they don't even know what's
12 happening. So you can't blame the courts. You can't blame
13 the attorneys. The people don't even know what's going on.

14 So I don't really know what else to say but
15 regarding taxes. They -- if they need to be filed, I guess
16 we'll, we'll file what needs to be done. But right now we
17 got to remember we still have two appeals pending and
18 possibly an adversary proceeding with a possible hearing to
19 be set for the evidentiary hearings.

20 And I just want to make it perfectly clear that I'm
21 not trying to eat up the court's time. State court will not
22 let me in there and, you know, maybe I got to do some more
23 studying or finding out what I need to do. But right now I'm
24 in federal court not state court. And I just want to make
25 one thing clear is that Fein, Such & Crane is, is, you know,

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1 been very, very, how do I say it in a diplomatic way very,
2 very, very mean to my mom. And I'm not going to get into the
3 details because it has nothing to do with this case but I
4 just want to make that on the record, Judge.

5 And I think I said enough for today's hearing.

6 **THE COURT:** All right.

7 **MR. BUCZEK:** Thank you.

8 **THE COURT:** Thank you. I appreciate everyone's
9 comments and I wanted to give everyone a full opportunity to
10 express those comments. I think we've done that.

11 We have three motions that still need to be
12 decided. I've already ruled on one of the motions.

13 But on the motion for sanctions, I'm going to deny
14 that application. And I make reference in here and
15 incorporate into my comments the decision I rendered several
16 weeks ago denying a stay pending appeal.

17 Fundamentally, what we have here is a foreclosure
18 proceeding that was decided in state court. Under New York
19 law when a lis pendens is filed -- or sometimes it's called a
20 notice of pendency -- the effect is to bind not only the
21 owner of the property but also anyone that subsequently
22 acquires an interest in the property. The foreclosure
23 proceeding was commenced against Deborah Buczek when the
24 property was thereafter transferred. That transfer did not
25 diminish the ruling of the state court but the ruling of the

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1 state court became binding on anyone that acquired a
2 subsequent interest in the property. That decision of the
3 state court is final and is resolved and settles the --

4 **MR. BUCZEK:** Your Honor --

5 **THE COURT:** -- the --

6 **MR. BUCZEK:** Your Honor --

7 **THE COURT:** No. It's my turn to speak.

8 **MR. BUCZEK:** I'm sorry.

9 **THE COURT:** -- and settles the matter in terms of
10 the KeyBank issue.

11 Having said that -- I say that as preliminary
12 background. Having said that, the motions for sanctions by
13 Mr. Buczek against Mr. Vilku's firm has no validity, no
14 basis and, therefore, that motion is denied.

15 We then have a cross-motion that's been filed
16 looking for sanctions. I'm going to grant that motion. The
17 motion asked for sanctions of \$715. I think those are
18 properly and correctly itemized and, therefore, that motion
19 is, that cross-motion of Fein, Such & Crane is granted to the
20 extent of allowing sanctions in the amount of \$715. The
21 balance of the application, I think, will be subsumed in
22 the -- and that was acknowledged by Mr. Vilku -- will be
23 resolved by my decision on the Trustee's cross-motion to
24 dismiss. And I'm going to grant that motion.

25 What we have here -- and one thing that Mr. Buczek

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1 did say correctly: He has no personal liability on any claim
2 to either of the mortgagees. The consequence is that there
3 is no potential for a deficiency judgment. The only claim
4 that we have here involves a secured claim against real
5 property. Stay relief has been granted with respect to both
6 of those mortgagees and as much as stay relief has been
7 granted, there's nothing left here for the Court to resolve
8 or decide. And I think the case is properly dismissed for
9 that reason.

10 So, I agree with Mr. Buczek that the claim for
11 dismissal under Section 521 for failure to file tax returns
12 would not be applicable in the event that tax returns were
13 not required. And without deciding whether they are required
14 or not required, I have Mr. Buczek's admission that -- or
15 representation that they're not required. And, so,
16 therefore, I'm not ruling on the Section 521 component of the
17 Trustee's cross-motion.

18 But I do agree with the Trustee that under Section
19 1307 and, in particular, Subdivision (c)(1), that the case
20 should be dismissed. (c)(1) allows for dismissal when there
21 is unreasonable delay by the debtor that is prejudicial to
22 creditors. I view that that is definitely the case here. We
23 have the interests of the KeyBank and of having been already
24 decided by state court, the proceedings in state, in this
25 court are efforts to delay the rights of KeyBank as

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1 previously established in state court and it is prejudicial
2 to the rights of the creditors to a prompt disposition of
3 their claim.

4 I think that there is a grounds to dismiss the case
5 under Section 1301(c)(1) and on that ground, I'm going to
6 grant the Trustee's cross-motion for dismissal and so the
7 case is dismissed. My ruling is without prejudice to any
8 further rights that may be had in state court. If state
9 court has imposed sanctions that limit the ability to
10 respond, that's part of the decision of state court. And I
11 leave that matter to the sound judgment of the judges in
12 State Supreme Court or County Court, as the case may be.

13 So, to summarize, the motion to compel,
14 administration of assets is denied. The motions for
15 imposition of sanctions against Fein, Such & Crane is denied.
16 The cross-motion of Fein, Such & Crane for sanctions is
17 granted to the extent of imposing sanctions in the amount of
18 \$715. And the Trustee's cross-motion to dismiss is granted.
19 Case is dismissed. All right.

20 **MS. MacDONALD:** Thank you, your Honor, should I
21 submit the order dismissing then?

22 **THE COURT:** Yes, you should.

23 **MS. MacDONALD:** Okay.

24 **THE COURT:** All right.

25 **MR. BUCZEK:** Okay, Judge, can I make a final

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1 comment?

2 **THE COURT:** Go ahead.

3 **MR. BUCZEK:** Okay. One thing I failed to address
4 really quick was the arbitration award and, you know, we
5 briefly spoke on that and signatures and everything and the
6 contract itself had the breach (phonetic) clause and I just
7 want to make that perfectly clear on the record that you did
8 see the arbitration award that got recorded? I'm not sure if
9 you even read the documents I filed because I know it's kind
10 of quite length --

11 **THE COURT:** I did --

12 **MR. BUCZEK:** -- quite lengthy.

13 **THE COURT:** I did read.

14 **MR. BUCZEK:** Did you read on that at all?

15 **THE COURT:** I did read the arbitration award and to
16 the extent that -- I am not persuaded as to its validity. I
17 see no basis for a consensual submission by KeyBank to the
18 arbitration and for that reason -- I gave it full
19 consideration but I find it not valid or -- I find that has
20 no effect on the proceedings before this court.

21 **MR. BUCZEK:** Okay. Thanks, Judge, for making that
22 finding.

23 And, lastly, in conclusion is that I need to go
24 back to your claim that I need to go back to state court and
25 file my own, whatever I need to do, I need to file something,

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1 maybe a separate case I need to go to state court, completely
2 go to state court.

3 **THE COURT:** No. I mean you have the option. I'm
4 not saying you have to do that but I don't limit or control
5 what you can do in state court.

6 **MR. BUCZEK:** Okay. Your Honor, and, lastly, the
7 appeals that are still pending with Judge Sinatra, if that,
8 if one of those cases or both of them do come back, what
9 happens regarding this bankruptcy being dismissed?

10 **THE COURT:** Well, I'm not sure what, how, how...
11 (WHEREUPON, proceedings ended.)
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CERTIFICATE OF TRANSCRIBER

In accordance with 28, U.S.C., 753(b), I
certify that this is a true and correct record of proceedings
from the official electronic sound recording of the
proceedings held in the United States Bankruptcy Court
for the Western District of New York before the
Honorable Carl L. Bucki on July 27, 2020.

S/ Diane S. Martens

Diane S. Martens
Transcriber

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

Shane Christopher Buczek

Debtor(s)

Case No.: 1-19-11441-CLB

Chapter: 13

SSN: xxx-xx-5635

**NOTICE OF FILING OF TRANSCRIPT AND OF
DEADLINES RELATED TO RESTRICTION AND REDACTION**

A transcript of the proceeding regarding Motions held on July 27, 2020 was filed on September 18, 2020. The following deadlines apply:

The parties have until **September 25, 2020** to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a request for redaction is **October 9, 2020**.

If a request for redaction is filed, the redacted transcript is due **October 19, 2020**.

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is **December 17, 2020**.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber or you may view the document at the clerk's office public terminal.

Date: September 18, 2020

Lisa Bertino Beaser
Clerk of Court

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